

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Behar et al.  
Serial No: 10/822,260  
Title: SYSTEMS AND METHODS FOR  
RESPIRATORY EVENT DETECTION  
Filed: April 9, 2004  
Examiner: (to be determined)  
Art Unit: 3736  
Docket No.: 0001733USU/2053 (formerly 10684-035-999)  
Confirmation No.: 2689  
Customer No.: 27,623

**PETITION UNDER 37 C.F.R. § 1.47(a)**

**Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Commissioner:

A Notice to File Missing Parts of a Non-Provisional Application (Notice) was mailed on July 1, 2004 in connection with the above-identified application. The present Petition is submitted because, after diligent effort, one of the eleven joint inventors of this application, Mr. Dana Inman, could not be reached in order to obtain an executed Declaration within the deadline required by the Notice.

A Declaration of Syrie Hope setting forth the diligent efforts to reach Mr. Inman accompanies this Petition.

It is believed that the enclosed check is sufficient for all fees due with this Petition including the fee set forth in 37 C.R.F. § 1.17(h); please charge any additional fee deemed necessary (and refund any overpayment) to Ohlandt, Greeley, Ruggiero & Perle, L.L.P. deposit account no. 01-0467.

02/08/2005 DTESSEN1 00000030 010467 10822260

04 FC:1463 70.00 DA 130.00 OP

The particular requirements for a petition under 37 C.F.R. § 1.47(a) are addressed in the following. M.P.E.P. § 409.03(a & d).

**A DECLARATION SIGNED BY ALL AVAILABLE JOINT INVENTORS**

Submitted herewith is a Declaration signed in six counterparts by the other ten joint inventors - Michael Coyle, Desmond Keenan, Alexander Derchak, Marvin Sackner, Frank Wilhelm, Keith Gilroy, Emmerance Gummels, Paul Kennedy, Mark Mitchnick, and Andrew Behar - on behalf of themselves and of Mr. Inman.

**DILIGENT EFFORTS TO REACH THE NON-SIGNING INVENTOR**

The diligent efforts by Ms. Syrie Hope, patent coordinator for VivoMetrics, Inc., to reach Mr. Inman within the deadline required by the Notice are set forth in detail in her accompanying Declaration.

In summary, Ms. Hope declares that she made the following attempts:

- a. Less than two months prior to the attempts documented herein, confirming with Mr. Inman his then current mailing and e-mail addresses; and
- b. Repeatedly sending patent documents for this application, including a Declaration, for execution by Mr. Inman; according to the standard practices in Ms. Hope's office, these documents were sent by e-mail to Mr. Inman's last known e-mail address; and
- c. Sending the patent documents by United Parcel Service courier to Mr. Inman's last known mailing address; and
- d. Locating and speaking with an acquaintance of Mr. Inman in order to obtain additional address information; and
- e. Sending the patent documents to an e-mail address newly obtained from the acquaintance; and
- f. Upon finally receiving a response from Mr. Inman on January 30, 2005 which included a request for a minor format change in the documents to

be executed, immediately responding on the same day by sending suitably edited documents to Mr. Inman.

Despite these efforts, Mr. Inman has not returned an executed Declaration as of the date of this Petition.

It is noted that VivoMetrics is the owner and/or assignee of this application for the following reasons:

- a. Executed Assignments received from inventors Michael Coyle, Desmond Keenan, Alexander Derchak, Marvin Sackner, Frank Wilhelm, Keith Gilroy, Emmerance Gummels, Paul Kennedy, Mark Mitchnick, and Andrew Behar;
- b. By assignment from Non-Invasive Monitoring Systems, Miami Beech, FL, with whom Mr. Inman was an employee assigned to perform research and development at the time of his inventive contribution to this application. (It is expected that when reached Mr. Inman will also execute and Assignment since he has previously done so in connection with a related application less than three months prior.)

Therefore, it is respectfully submitted that diligent efforts have been made to reach Mr. Inman, but despite these efforts, he has not returned an executed declaration as of the date of this Petition.

**THE LAST KNOWN ADDRESS OF THE NON-SIGNING INVENTOR**

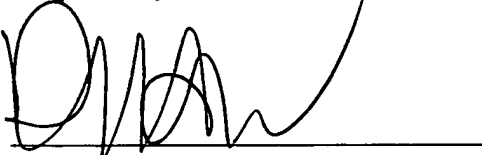
The last known mailing address of the Mr. Inman is 4014 Rolling Green Drive, Seabrook, Texas, 77586. The last known e-mail addresses of Mr. Inman are *mike@mangocats.com* and *merchant.joe@gmail.com*.

## CONCLUSION

It is respectfully submitted that this Petition and accompanying Declaration meet the requirements for a petition under 37 C.F.R. § 1.47(a) as identified in M.P.E.P. § 409.03(a & d). It is respectfully requested that this Petition be granted and that this application proceed to examination.

February 1, 2005  
Date:

Respectfully submitted,



Dwight H Renfrew, Jr.

Reg. No. 38,594

Attorney for the Applicants

Ohlandt, Greeley, Ruggiero & Perle, L.L.P.

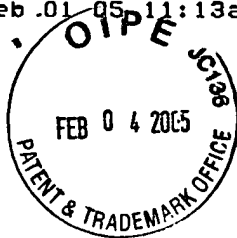
One Landmark Square, 10<sup>th</sup> Floor

Stamford, CT 06901-2682

Tel: 203-327-4500

Fax: 203-327-6401

*Enclosure*



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**DECLARATION OF SYRIE HOPE**  
**IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(a)**

**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Commissioner:

I, SYRIE HOPE, declare and state as follows:

1. I am a United States citizen residing at Ventura, California 93036.
2. I have been employed as an Executive Associate by VivoMetrics Government Services, Inc., a subsidiary of VivoMetrics, Inc., since August 2004. Among my responsibilities, I am patent coordinator and track patent applications for VivoMetrics and patents, obtain necessary documents from inventors and others, and the like.
3. On January 5, 2005, I distributed patent documents, including Declarations and Assignments, in connection with the above-identified application to the eleven (11) inventors of this application - Michael Coyle, Desmond Keenan, Alexander Derchak, Marvin Sackner, Frank Wilhelm, Keith Gilroy, Dana Inman, Emmerance Gummels, Paul Kennedy, Mark Mitchnick, and Andrew Behar. According to the

standard practices in my office, I distributed these documents by e-mail to the last known e-mail address of the inventors (other than those inventors who happened to be personally available).

4. I promptly received by facsimile or return e-mail executed Declarations from all the nine inventors except Emmerance Gummels and Dana Inman. I recently received an executed Declaration from Emmerance Gummels. I have not yet received an executed Declaration from Mr. Inman.

5. On January 12, 2005, since I had not yet received any conformation or response from Mr. Inman, I again e-mailed the patent documents to Mr. Inman at his last known e-mail address.

6. Mr. Inman's last known e-mail address had been confirmed on or about November 15, 2004 when I distributed by e-mail and received executed patent documents from Mr. Inman and others in connection with a patent application other than the one identified above. At that time Mr. Inman confirmed his then current e-mail address was *mike@mangocats.com* and his then current mailing address was 4014 Rolling Green Drive, Seabrook, Texas, 77586.

7. On January 20, 2005, since I still had not yet received any conformation or response from Mr. Inman, I sent paper copies of the patent documents, including the application, to Mr. Inman via United Parcel Service (UPS) courier. Included was a cover letter requesting that Mr. Inman review, sign and return the Declaration to me as soon as possible.

8. These documents were delivered by UPS on January 21, 2005 as evidenced by the UPS delivery confirmation attached to my Declaration. Also, as of that date, no e-mails to Mr. Inman had been returned as undeliverable.

9. On January 27, 2005, since I still had not yet received any conformation or response from Mr. Inman, I again e-mailed the patent documents to Mr. Inman at his last known e-mail address.

10. Also on January 27, 2005, I also was able to locate and speak with an acquaintance of Mr. Inman who suggested that I try a different e-mail address, namely *merchant.joe@gmail.com*. Immediately, also on January 27, 2005, I e-mailed the patent documents to Mr. Inman at the new e-mail address and requested that he execute them then return them by UPS courier.

11. On January 30, 2005, I received an e-mail from Mr. Inman at the new e-mail address that indicated a willingness to execute the patent documents sign if they would specifically identify this patent application on the page of, and in the vicinity of, his signature block.

12. Immediately on January 30, 2005, I edited the Declaration to add the serial number and filing date of this application in a margin adjacent to Mr. Inman's signature block. I then immediately e-mailed the edited patent documents to Mr. Inman at the new e-mail address and requested that he return at least the executed Declaration to me by February 1, 2005.

13. As of the date of my declaration, a Declaration executed by Inman still has not been received.

14. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 2/1/05

  
Syrie E. Hope

*Attachment*

## UPS Package Tracking



Page 1 of 1



### DELIVERY NOTIFICATION

Dear Customer,

This is in response to your request for delivery information concerning the shipment listed below.

**Tracking Number:** 1Z 47A E99 01 4008 715 5  
**Service Type:** NEXT DAY AIR  
**Package Weight:** .50 Lb  
**Shipped or Billed on:** Jan 20, 2005  
**Delivered on:** Jan 21, 2005 10:13 A.M.  
**Delivered to:** SEABROOK, TX, US  
**Location:** FRONT DOOR

Thank you for giving us this opportunity to serve you.

Sincerely,  
United Parcel Service

Tracking results provided by UPS: Jan 31, 2005 5:28 P.M.  
Eastern Time (USA)